

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOILERMAKERS NATIONAL ANNUITY
TRUST FUND, on behalf of itself and all
others similarly situated,

Plaintiff,

v.

WAMU MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2006-AR1, *et al.*,

Defendants.

Case No. C09-0037 MJP

**[PROPOSED] ORDER GRANTING
LEAVE TO AMEND THE FIRST
AMENDED CONSOLIDATED
COMPLAINT, DENYING PENDING
MOTIONS WITHOUT PREJUDICE
AS MOOT, AND MODIFYING THE
COURT'S SCHEDULING ORDER**

NEW ORLEANS EMPLOYEES'
RETIREMENT SYSTEM, *et al.*,

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK, *et al.*,

Defendants.

NEW ORLEANS EMPLOYEES'
RETIREMENT SYSTEM, *et al.*,

Plaintiffs,

v.

THE FIRST AMERICAN CORPORATION, *et
al.*,

Defendants.

1 WHEREAS, Plaintiff Chicago PABF will file a motion for consolidation of this action with
2 *Doral Bank Puerto Rico v. Washington Mutual Asset Acceptance Corp.*, No. C09-1557 (MJP)
3 (hereinafter the “*Doral Action*”) within five (5) days after the Court rules on the respective motions
4 for appointment as lead plaintiff filed in that action;

5 WHEREAS, Plaintiff has requested leave to amend the Amended Consolidated Complaint
6 (the “Complaint”) until the Court determines whether to permit consolidation of this action with a
7 related action, *Doral Bank Puerto Rico v. Washington Mutual Asset Acceptance Corp.*, No. C09-
8 1557 (MJP) (hereinafter the “*Doral Action*”);

9 WHEREAS, Plaintiff seeks to amend and supplement its allegations in the Complaint to take
10 into account recent legal decisions and new facts learned from related litigation and other sources,
11 and to address matters raised by the Defendants in their pending motions;

12 WHEREAS, the filing of a new complaint may cause Defendants to modify the positions
13 taken in their pending motions for dismissal;

14 WHEREAS, the interests of efficiency and consistency will be served by having a single
15 consolidated complaint raising all issues, and a single set of motions to dismiss;

16 THEREFORE, IT IS HEREBY ORDERED:

17 (A) Plaintiff shall be granted leave to amend in the following respects:

18 (1) to withdraw all claims under the Securities Act of 1933 against Defendants
19 The First American Corporation (“First American”) and eAppraiseIT, LLC
20 (“eAppraiseIT”) (collectively, the “Appraiser Defendants”);

21 (2) to conform the Complaint to this Court's reasoning in its October 27, 2009
22 Order with respect to standing in the *In re Washington Mutual, Inc. Securities*
23 *Litigation*, No. 2:08-md-1919 (MJP) (the “MDL Action”), by withdrawing
24 allegations related to offerings of Certificates that were not purchased by
25 named plaintiffs;

26 (3) to include additional facts, including, but not limited to, facts concerning the
27 various Defendants' involvement in the marketing and sale of the WaMu
28

Mortgage Pass-Through Certificates (the "Certificates");

(4) to allege a claim under 17 C.F.R. §240.10b-5 ("Rule 10b-5") against Defendants The McGraw-Hill Companies ("S&P") and Moody's Investors Service, Inc. ("Moody's") (collectively, the "Rating Agency Defendants"); and

(5) to allege claims under California's Unfair Competition Law ("UCL") Business & Professions Code §17200 *et seq.* against the Appraiser Defendants.

(B) Defendants' motions to dismiss are denied as moot, without prejudice, and Defendants shall move to dismiss or answer the Second Amended Consolidated Complaint as provided below.

(C) This Court's Order of December 18, 2009 (Dkt. No. 188) is modified in the following respects:

1. Lead Plaintiff shall file a Second Amended Consolidated Class Action Complaint 30 days after this Court issues an order on the motion for Lead Plaintiff and Motion to Consolidate in the *Doral* Action;
2. Defendants shall answer or file their motions to dismiss the Second Amended Consolidated Class Action Complaint 30 days after the complaint is filed;
3. Lead Plaintiff's responses to motions to dismiss shall be due 30 days after Defendants' motions; and
4. Defendants shall file reply briefs, and any such motions shall be noted for consideration, 14 days after Lead Plaintiff's responses are filed.

(D) Consistent with this Court's prior orders, the Washington Mutual Defendants may collectively file one omnibus motion in response to the complaint limited to 48 pages, and the Ratings Agency Defendants may also file one omnibus motion limited to 48 pages.

IT IS SO ORDERED.

Dated this ____ day of _____, 2010.

The Honorable Marsha J. Pechman
United States District Court Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ramzi Abadou - rabadou@btkmc.com,knguyen@btkmc.com

Naumon A. Amjed - namjed@btkmc.com,rcordisco@btkmc.com

Michael H. Barr - mbarr@sonnenschein.com

Walter Eugene Barton
gbarton@karrtuttle.com,nrandall@karrtuttle.com,danderson@karrtuttle.com

Steve W. Berman
steve@hbsslaw.com,robert@hbsslaw.com,heatherw@hbsslaw.com

Frank Busch - frank.busch@bingham.com,frank.downing@bingham.com

Steven P. Caplow - stevencaplow@dwt.com,belenjohnson@dwt.com

Kevin P. Chavous - kchavous@sonnenschein.com

Hal D. Cunningham - hcunningham@scott-scott.com

Kerry F. Cunningham - kerry.cunningham@dlapiper.com

Leslie D. Davis - ldavis@sonnenschein.com

Corey E. Delaney
corey.delaney@dlapiper.com,kerry.cunningham@dlapiper.com,
lorna.bernard@dlapiper.com,richard.hans@dlapiper.com,patrick.smith@dlapiper.com

Joseph A. Fonti
jfonti@labaton.com,ElectronicCaseFiling@labaton.com

Jonathan Gardner - jgardner@labaton.com

Joseph P. Guglielmo
jguglielmo@scott-scott.com,efile@scott-scott.com

1 Richard F. Hans
2 richard.hans@dlapiper.com,dorinda.castro@dlapiper.com
3 David Daniel Hoff - dhoff@tousley.com,efile@tousley.com
4 Christopher M. Huck
5 Christopher.huck@dlapiper.com,karen.hansen@dlapiper.com
6 Julie Hwang
7 jhwang@labaton.com,ElectronicCaseFiling@labaton.com
8 Reed R. Kathrein - reed@hbsslw.com,sf_filings@hbsslw.com
9 Stellan Keehnel
10 stellman.keechnel@dlapiper.com,patsy.howson@dlapiper.com
11 John A. Kehoe
12 rabadou@btkmc.com,rcordisco@btkmc.com,bsharma@btkmc.com, jkehoe@btkmc.com
13 Joel P. Laitman - jlaitman@cohenmilstein.com
14 Bruce Earl Larson - blarson@karrtuttle.com,psteinfeld@karrtuttle.com
15 Mike Liles, Jr. - mliles@karrtuttle.com
16 Christopher E. Lometti - clometti@cohenmilstein.com
17 Bradley T. Meissner - bradley.meissner@dlapiper.com
18 Timothy Michael Moran
19 moran@kiplinglawgroup.com,cannon@kiplinglawgroup.com
20 Sharan Nirmul - snirmul@btkmc.com,rcordisco@btkmc.com
21 Lauren Wagner Pederson lpederson@btkmc.com,rcordisco@btkmc.com
22 Erik D. Peterson
23 epeterson@btkmc.com,knguyen@btkmc.com
24 Kenneth J. Pfahler
25 kpfaehler@sonnenschein.com,nreeber@sonnenschein.com
26 Daniel B. Rehns - drehns@cohenmilstein.com
27 Serena Richardson
28 srichardson@labaton.com,ElectronicCaseFiling@labaton.com
Rogelio Omar Riojas
omar.riojas@dlapiper.com,nina.marie@dlapiper.com

1 Stephen M. Rummage
2 steverummage@dwt.com,jeannecadley@dwt.com

3 Hollis Lee Salzman
4 hsalzman@labaton.com,ElectronicCaseFiling@labaton.com

5 Paul Scarlato
6 pscarlato@labaton.com,ElectronicCaseFiling@labaton.com

7 Frank R. Schirripa - frank@spornlaw.com

8 Bharati O. Sharma
9 bsharma@btkmc.com,rcordisco@btkmc.com

10 Arthur L. Shingler
11 ashingler@scott-scott.com,cmcgowan@scott-scott.com,efile@scott-scott.com

12 Kim D. Stephens - kstephens@tousley.com,bkinsey@tousley.com

13 Robert D. Stewart
14 stewart@kiplinglawgroup.com,cannon@kiplinglawgroup.com

15 Dennis H. Walters
16 dwalters@karrtuttle.com,wbarker@karrtuttle.com

17 DATED this 25th day of February, 2010 at San Diego, California.

18 By: /s/ Hal D.Cunningham
19 Hal D. Cunningham (*pro hac vice*)
20 600 B Street, Suite 1500
21 San Diego, CA 92101
22 Telephone: (619) 233-4565
23 hcunningham@scott-scott.com
24
25
26
27
28